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No. 03-342

Supreme Court, U.S.
FILED
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IN THE

# Supreme Court of the United States

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DENISE ARGUELLO and ALBERTO GOVEA,
*Petitioners,*

v.

CONOCO, INC.,
*Respondent.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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## PURPOSE OF REPLY BRIEF

Arguello and Govea file this Reply Brief to alert the Court to a key misstatement of fact in Respondent's Brief in Opposition so that the Court decides the pending Petition for Writ of Certiorari based on the true facts of this case.

In its Brief in Opposition, Conoco states: "Smith in fact was warned in writing about her conduct." (Brief in Opp., p. 2) (citing 23R7). This is false.

Smith testified:

Q: You were never told by Conoco that you were being disciplined for this incident; is that correct?

A: Disciplined how? There was not a written . . .

Q: Answer my question. You were never told by anyone from Conoco that you were being disciplined for this incident; is that correct?

A: Correct.

Q: And you never signed any sort of disciplinary form or a counseling form for Conoco with regards to this incident; isn't that correct?

A: To my knowledge, correct.

(22R42, lines 6-16).

Conoco's citation to the record (23R7) does not support its misstatement of fact. The page Conoco cites actually contradicts Conoco's statement to the Court. It shows that if Smith had been given a written warning, any warning would have been contained in her personnel file. Gloria Huff, Conoco's Senior Advisor of Human Resources, testified that:

Q: Did you ever confirm whether or not Cindy Smith was reprimanded?

A: No, I didn't.

Q: If she was reprimanded is that something that you would expect to find in Cindy Smith's personnel file?

A: Yes, if it was written.

Q: Is Cindy Smith still an employee of Conoco?

A: I don't believe she is.

Q: If Cindy Smith received a written counseling form would you expect to find that in Cindy Smith's personnel file?

A: That is where it should be placed.

(23R7, lines 6-17). There are no other references whatsoever on that page of testimony concerning reprimands, warnings, or any discipline for Smith. Smith's personnel file contains

no written warning or other type of discipline for the incident. (Plaintiffs' Exhibit 8).

## CONCLUSION

The true facts of this case reveal a racially motivated attack against Arguello and Govea during the course of their attempts to purchase goods. This attack prevented them from making the purchases they attempted to make. Conoco knew of this attack, failed to discipline the store clerk in any way, failed to reply to Arguello's complaint letter, and never instituted a policy against racial abuse of customers.

Certiorari should be granted on both questions included in the Petition. First, the circuit courts are split on whether the store clerk's conduct in these circumstances is actionable under 42 U.S.C. § 1981. Second, the case involves extraordinarily important questions concerning race discrimination that should be settled by the Court. This decision literally affects millions of people nationwide.

Respectfully submitted,

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